

MINUTES OF THE 156TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA

JULY 2, 2008

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 8:30 a.m. CDT. A quorum was present.

The following were present at the meeting:

Board Members: Jim Hutmacher, Leo Holzbauer, Everett Hoyt, Rodney Freeman, Tim Bjork, and Francis Brink. Bernita Loucks was absent.

Department of Environment and Natural Resources (DENR): Garland Erbele, Eric Gronlund, Lynn Beck, Ron Duvall, Jim Goodman, Mike DeFea, Karen Schlaak, Tim Schaal, Mark Rath, and Aaron Tieman, Water Rights Program; Bill Markley, Doug Miller, Gary Haag, and Tom Brandner, Ground Water Quality Program.

Attorney General's Office: Diane Best, John Wallace, and Jeff Hallem.

Others: See attached attendance sheet.

BOARD REORGANIZATION: Motion by Freeman, seconded by Holzbauer, to elect Everett Hoyt as chairman, Tim Bjork as vice chairman, and Bernita Loucks as secretary. Motion carried.

Chairman Hoyt thanked Jim Hutmacher for serving as board chairman for the past two years.

APPROVE MAY 7, 2008, BOARD MINUTES: Tim Bjork requested that the minutes be amended to reflect that he attended the May meeting.

Motion by Freeman, seconded by Holzbauer, to approve the minutes from the May 7, 2008, Water Management Board minutes, as amended. Motion carried.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Jeff Hallem reported that the parties were served with a notice of appeal from Mr. Tom Tobin, attorney from Aberdeen, on behalf of Allen Hieb, Delores Hieb, Dale Mohr, and Raymond Groft, regarding the Harlan Aman application.

ADMINISTER OATH TO DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) STAFF: Chairman Hoyt administered the oath to DENR staff who intended to testify during the meeting.

REQUEST TO ADVERTISE PUBLIC HEARING ON AMENDMENTS TO FINANCIAL ASSURANCE RULES: Ron Duvall requested permission to advertise for a public hearing to be

held at the October board meeting to consider amendments to 74:07:01 – Water Management Board Requirements for Environmental Financial Assurance.

Motion by Brink, seconded by Bjork, to authorize the department to advertise for a public hearing to consider amendments to 74:07:01. Motion carried.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT APPLICATION NO. 2624-2, EDWARD HILL: Jeff Hallem reported that no comments or objections were received from either the applicant or the interveners in this matter. Ms. Best submitted suggested changes on behalf of DENR.

Mr. Hallem presented the Water Management Board's ruling on DENR proposed Findings of Fact, Conclusions of Law, and Final Decision. He noted that the Findings of Fact, Conclusions of Law, and Final Decision were changed to reflect the proposed changes, including changing the chairman from Mr. Hutmacher to Mr. Hoyt.

Motion by Freeman, seconded by Hutmacher, to adopt Water Management Board's ruling on DENR proposed Findings of Fact, Conclusions of Law, and Final Decision, with the signature changed from James Hutmacher to Everett Hoyt. Motion carried. Hoyt abstained from voting.

Motion by Freeman, seconded by Hutmacher, to adopt the Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit Application No. 2624-2, Edward Hill, with the signature changed from James Hutmacher to Everett Hoyt. Motion carried. Hoyt abstained from voting.

Ms. Best asked that the record reflect that the chief engineer was present for this matter, but the other parties were not present.

PUBLIC HEARING ON AMENDMENT TO ADMINISTRATIVE RULES ON UNDERGROUND STORAGE TANKS: Chairman Hoyt opened the hearing at 9:00 a.m. CDT.

The purpose of the hearing was to consider the adoption and amendment of proposed rules numbered ARSD 74:56:01:01, 74:56:01:03, 74:56:01:05, 74:56:01:06, 74:56:01:10:01, 74:56:01:10:02, 74:56:01:10:03, 74:56:01:38:01, 74:56:01:55:01 inclusive.

If adopted, the rules will require secondary containment and leak monitoring for new and replacement tank systems located within 1,000 feet of an existing community water system or any potable drinking water well, require department approved training for owners and operators of regulated tank systems and make it illegal for non-compliant tank systems to receive delivery of regulated substances.

The reason for adopting the proposed rules is to comply with federal requirements mandated under the Energy Policy Act of 2005.

Doug Miller, DENR Ground Water Quality Program, provided an explanation of the proposed changes. The department proposed the following amendments to the rules.

74:56:01:01. Definitions. Terms used in this chapter are defined as follows:

(09:01) "Community water system," a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(12.1) "Dispenser," any equipment that is used to control transfer of regulated substances out of the regulated UST system to an unregulated point of use, such as a vehicle.

(40.1) "Potable drinking water well," any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which: supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing and cooking, or other similar uses).

(45) "Secondary containment," a system installed around an UST that is designed to prevent a release from migrating beyond the secondary containment system outer wall in the case of a double-walled tank system or excavation area in the case of a liner or vault system before the release can be detected a release prevention and release detection system for an underground tank and/or piping. The release prevention part of secondary containment is an underground tank and/or piping having an inner and outer barrier. Between these two barriers is a space for monitoring. The release detection part of secondary containment is a method of monitoring the space between the inner and outer barriers for a leak or release of regulated substances from the underground tank and/or piping. Secondary containment must contain regulated substances released from the tank system until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system.;

(52.1) "Under-Dispenser Sump," containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water.

Source: 14 SDR 76, effective November 29, 1987; 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:03. Applicability. The requirements of this chapter apply to all owners or operators of a UST system except the following:

(1) Underground storage tank systems containing hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act of 1984 or a mixture of hazardous waste and other regulated substances;

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or 307(b) of the Clean Water Act 1972;

(3) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(4) Any UST system whose capacity is 110 gallons or less;

(5) Any UST system that contains a de minimis concentration of regulated substances;
and

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

Sections 74:56:01:24 and 74:56:01:25 do not apply to any UST system that stores fuel for use by emergency power generators. After August 1, 2008, any new or replacement UST system used by emergency generators located within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and monitored for leaks in accordance with 74:56:01:30.

Source: 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:01.02, July 1, 1996; 23 SDR 131, effective February 24, 1997.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:05. Performance standards for new UST systems -- Tanks. Each tank in a new UST system must be designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in 40 C.F.R. § 280.20 as published at 53 Fed. Reg. 37,197 (September 23, 1988) for each type of tank listed. Tanks that may be used in a new UST system are as follows:

(1) A tank constructed of fiberglass-reinforced plastic;

(2) A tank constructed of coated steel that is cathodically protected with a factory- or field-installed cathodic protection system designed by a corrosion expert and is operated and maintained in accordance with § 74:56:01:14;

(3) A tank constructed of a steel-fiberglass-reinforced plastic composite; or

(4) A tank whose design, construction, and corrosion protection is determined by the department to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than subdivisions (1) to (3), inclusive, of this section.

All new tanks installed within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and monitored for leaks in accordance with 74:56:01:30.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:06. Performance standards for new UST systems -- Piping. The underground piping for a new UST system must be designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified in 40 C.F.R. §280.20 as published at 53 Fed. Reg. 37,197 (September 23, 1988), for each type of piping listed. Underground piping that may be used in a new UST system is as follows:

- (1) Piping constructed of fiberglass-reinforced plastic;
- (2) Piping that is coated steel and cathodically protected with a field-installed cathodic protection system that is designed by a corrosion expert and operated and maintained in accordance with §74:56:01:14; or
- (3) Piping whose design, construction, and corrosion protection is determined by the department to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions (1) and (2) of this section.

All new piping installed within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and monitored for leaks in accordance with 74:56:01:30 and must include under dispenser sumps.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:10:01. Replacement of existing UST systems. – Tanks. All existing UST systems located within 1,000 feet of an existing community water system or potable drinking water well that are replaced after August 1, 2008, must be upgraded to provide secondary containment and monitored for leaks in accordance with 74:56:01:30.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:10:02. Replacement of existing UST systems. – Piping. If over 25 feet of existing piping, located within 1,000 feet of an existing community water system or potable drinking water well is replaced after August 1, 2008, then the entire pipe run must have secondary

containment and must include under dispenser sumps. Replaced systems must be designed, constructed and installed to allow for proper leak detection in accordance with 74:56:01:30.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:10:03. Installation of under-dispenser sumps. All new dispenser islands or replacement islands must be installed to include under dispenser sumps unless it has been determined that the new dispenser is not located within 1,000 feet of any existing community water system or any existing potable drinking water well. The under-dispenser sump must be designed, constructed and installed to:

- (1) prevent releases to the environment;
- (2) be compatible with the substances carried by the piping;
- (3) allow for monitoring of releases; and
- (4) be liquid tight.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:38:01. Training of Owners and Operators. By August 8, 2012, all owners and operators of regulated UST systems must complete a department approved training program on the proper operation of underground storage tank systems.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

74:56:01:55:01. Failure To Comply. All regulated UST systems must comply with the requirements of this chapter. Failure to comply with these requirements may result in the UST system being designated in-eligible to receive further deliveries of product as well as other actions.

Source: 14 SDR 76, effective November 29, 1987; transferred from § 74:03:28:02, 18 SDR 62, effective October 10, 1991; transferred from § 74:03:28:02.01, July 1, 1996.

General Authority: SDCL 34A-2-93, 34A-2-99.

Law Implemented: SDCL 34A-2-98, 34A-2-99.

Written comments were received prior to the hearing from the Legislative Research Council (LRC) regarding form and style and legality. LRCs changes will be incorporated into the final version of the rules.

Prior to the hearing written comments were received from Jay Gilbertson, East Dakota Water Development District, and Gerald F. Owens, Department of Defense.

The department proposed the following changes in response to written comments.

74:56:01:03. Applicability.

Sections 74:56:01:24 and 74:56:01:25 do not apply to any UST system that stores fuel for use by emergency power generators. After August 1, 2008, any new or replacement UST system used by emergency generators located within 1,000 feet of an existing community water system or any potable drinking water well must have secondary containment and monitored for leaks in accordance with 74:56:01:30.

Mr. Miller stated that after reviewing the time line for implementation it appears meeting an August 1, 2008 implementation date is unrealistic. The department requested the date be changed to October 1, 2008.

74:56:01:10:01. Replacement of existing UST systems. – Tanks. All existing UST systems located within 1,000 feet of an existing community water system or potable drinking water well that are replaced after August 1, 2008, must be upgraded to provide secondary containment and monitored for leaks in accordance with 74:56:01:30.

Mr. Miller noted that after reviewing the time line for implementation it appears meeting an August 1, 2008 implementation date is unrealistic, and he requested the date be changed to October 1, 2008.

74:56:01:10:02. Replacement of existing UST systems. – Piping. If over 25 feet of existing piping, located within 1,000 feet of an existing community water system or potable drinking water well is replaced after August 1, 2008, then the entire pipe run must have secondary containment and must include under dispenser sumps. Replaced systems must be designed, constructed and installed to allow for proper leak detection in accordance with 74:56:01:30.

Mr. Miller again noted that after reviewing the time line for implementation it appears meeting an August 1, 2008 implementation date is unrealistic, and he requested the date be changed to October 1, 2008.

74:56:01:55:01. Failure To Comply. All regulated UST systems must comply with the requirements of this chapter. Failure to comply with these requirements may result in the UST system being designated in-eligible to receive further deliveries of product as well as other actions.

Mr. Miller stated that based on comments made by LRC the phrase “as well as other actions” will be omitted. The sentence will read “Failure to comply with these requirements may result in the UST system being designated in-eligible to receive further deliveries of product.”

This concluded Mr. Miller’s presentation on the proposed rules. He answered questions from the board.

Mr. Miller stated that notice of the hearing was published in the Brookings Daily Register on June 20, 2008, Pierre Capital Journal on June 19, 2008, and Rapid City Journal on June 20, 2008.

The public notice was mailed to the department’s interested persons mailing list, the Bureau of Finance and Management, and the Legislative Research Council. The proposed revisions were also posted on DENR’s website.

Chairman Hoyt requested public comments on the proposed rules.

Donna Leitzke, Executive Director of the South Dakota Petroleum and Propane Marketer’s Association, Pierre, SD, offered comments in support of the proposed rules.

No one offered comments in opposition to the rules.

Chairman Hoyt called a recess to allow Mr. Miller to provide the board with the fiscal note for the file.

Following the break, Mr. Miller submitted the original comment letters from Jay Gilbertson, Gerald Owens, and Doug Decker, LRC. He also provided the board with the submittal for the financial note with the response, the Small Business Impact Statement, the public notice, a copy of the mailing list, and the list of newspapers in which the notice was published.

Mr. Miller noted that Affidavits of Publication have not been received from any of the newspapers. Mr. Miller said he had received an e-mail from the Capital Journal stating that the notice would be published before June 20, 2008.

Mr. Miller requested board approval of the proposed amendments.

Mr. Hallem stated that it appears the notice of hearing may not have been properly published. He requested that Mr. Miller contact the three newspapers and requested confirmation that notice was published.

Mr. Hallem suggested that Chairman Hoyt close the public hearing and defer board action until later in the meeting.

STATEMENT OF REASONS ON REVISIONS TO ADMINISTRATIVE RULES ON UNDERGROUND INJECTION CONTROL CLASS III WELLS: Gary Haag reported that Nancy Hilding, Prairie Hills Audubon Society, submitted a written request dated May 1, 2008, requesting a statement of reasons regarding revisions to the Class III Underground Injection Control Wells rules.

Mr. Haag presented the statement of reasons, and requested board approval.

Motion by Freeman, seconded by Brink, to adopt the statement of reasons, as presented. Motion carried.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: See attachment.

WATER PERMIT APPLICATION NO. 6976-3, DAVID DIEDRICH: Diane Best offered DENR Exhibit 1, James Goodman's Curriculum Vita and DENR Exhibit 2, the agency file. The exhibits were accepted into the record.

Ms. Best noted that Lance Bothe filed a petition to intervene in this matter. Mr. Bothe was not present at the hearing.

Larry Diedrich appeared on behalf of David Diedrich.

Jim Goodman presented his report on the application.

The application proposes to appropriate 1.33 cfs from one well approximately 45 feet deep to irrigate 120 acres in Brookings County.

The source of water for this application is the Big Sioux Aurora aquifer, which is a surficial outwash (sand and gravel) that is under water table conditions in this area. The aquifer underlies 39,300 acres and contains an estimated 165,060 acre-feet of recoverable water in storage in Brookings County. The aquifer blends into the Big Sioux Brookings aquifer to the west and is hydraulically connected to Medary Creek and its tributaries in this area. The direction of groundwater movement is from northeast to southwest in the area of this application. Recharge has been estimated to be about 6.57 inches per year for the water table portions of the Big Sioux aquifer in Brookings County.

No test wells were drilled for this application. There is an existing test well drilled in 1975 reportedly in this section that indicates about 15 feet of sand and gravel from 15 to 25 feet and 30 to 35 feet below land surface. This would be a marginal thickness of material for an irrigation well and if correct would be a 35 feet deep well not 45 feet deep. Also there was test drilling done for Water Permit No. 4359-3 which also indicated one test hole #4 had sand and gravel from 12 to 39 feet below land surface but did not indicate where this test hole was. Three other tests in this area did not indicate adequate water for irrigation purposes. All this information is poor because the locations of the tests are not well defined.

The Water Rights Program monitors three observation wells completed into the Big Sioux Aurora aquifer and within three miles of this application. These are observation wells BG-77J (located about three miles northeast), BG-#08 (located about three miles west) and BG-#12 (located about three miles southwest) all from the site of this application. Hydrographs for these three wells are included in Mr. Goodman's report. Water levels for these wells show good response to climatic conditions. Water levels rise during wet periods (recharge) and gradually decline during dry years. In general the water level record indicates that the aquifer is capable of sustaining additional withdrawals.

There nearest existing water permits/rights are one and one-half to two miles north of this application. At this distance drawdown would be insignificant. Interference is not a concern. There was an irrigation permit No. 4359-3 issued for these same lands but it was cancelled in 1986 because the system was not constructed.

Mr. Goodman concluded that water is available from the Big Sioux Aurora aquifer. The aquifer is under water table conditions in this area. Drawdown created by pumping should not be significant. Interference is not a concern. Test wells need to be completed to evaluate this well site to determine where a production well may be drilled and to determine the number of wells that may be needed. The proposed site is near the mapped boundary of the Big Sioux Aurora aquifer. The aquifer appears to be thicker to the north and to the west of this proposed well location. Any wells constructed must be completed in accordance with SD Well Construction Standards.

The chief engineer recommended approval of Application No. 6976-3 with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the Irrigation Water Use Questionnaire Qualification.

Eric Gronlund testified that he talked with Mr. Bothe on the telephone the day before the board meeting and informed him that he should appear at the hearing. He also explained to Mr. Bothe that drainage issues were under county authority.

Larry Diedrich was administered the oath and testified that test wells will be drilled and if it is found that enough water is not available to properly irrigate, the project will not be completed.

Responding to questions from Ms. Best, Mr. Diedrich stated that trees were planted on this land as part of a riparian CRP program. This portion of the land will not be irrigated.

Motion by Hutmacher, seconded by Holzbauer, to approve Water Permit Application No. 6976-3, David Diedrich, subject to the qualifications set forth by the chief engineer. Motion carried.

Ms. Best and Mr. Diedrich waived Findings of Fact and Conclusions of Law.

CANCELLATION CONSIDERATIONS: Mr. Gronlund reported that eight water permits/rights were scheduled for cancellation. The owners were notified of the hearing and the reason for cancellation. Mr. Gronlund noted that the department received no letters in response to the notices of cancellation. He requested the board consider cancellation of the eight permits/rights.

The following water permits/rights were recommended for cancellation for the reasons listed:

Water Right No. 807-1 filed by Tom & Lela Bowen; abandonment/forfeiture

Water Right No. 1014-1 filed by Ronald Steineke; abandonment/forfeiture (Irrigation portion of the water right is cancelled. The dams are still in place and used for domestic purposes).

Water Right No. 2865-3 filed by Cronin Farms, Inc.; abandonment

Water Right No. 4371-3 filed by Lynn Sanderson; abandonment/forfeiture

Water Right No. 4549-3 filed by Thompson Hereford Ranch; abandonment/forfeiture

Water Right No. 4743-3 filed by Harvey & Andrea Sheehan now owned by Wayne & Astrid Farries; abandonment/forfeiture

Water Right No. 4759-3 filed by Daniel Conkling; abandonment/forfeiture

Water Right No. 5721-3 filed by Holzwarth Brothers; abandonment/forfeiture (Irrigation portion of the water right and the diversion authority from the Missouri River is cancelled. The dam is still in place and used for domestic purposes).

Water Permit No. 6385-3 filed by SDAPV Dairy Development, LLC; non-construction

Motion by Freeman, seconded by Bjork, to cancel the eight water permits/rights for the reasons listed. Motion carried.

SEVEN YEAR REVIEW OF FUTURE USE PERMITS: All future use permits are required to be reviewed by the Water Management Board every seven years for anticipated development and future need.

Eric Gronlund reported that eight future use permits were scheduled for review. The permit holders requested retention of their respective future use permits. The future use reviews were public noticed in the local newspapers and no petitions to intervene were submitted.

The chief engineer recommended allowing the following eight future use permits to remain in effect for the amounts shown.

FU Permit No.	Permit Holder	Year issued	Source	Submitted pump records (annually)	Amount Recommended AF-acre-feet
551-2	City of Winner	1959	Ogallala Formation	806 AF	1,568 AF
1622-2	City of Gregory	1979	Ogallala Formation	supplied by Tripp Co RWS plus 251 AF from wells	365 AF
1660-2	City of Burke	1979	Ogallala Formation	supplied by Tripp Co RWS	396 AF
3429-3	WEB Development Association	1977	Missouri River	5,872 AF	15,000 AF
3984A-3	Big Sioux Community Water System	1978	Big Sioux: Moody Aquifer	1,538 AF	889 AF
4456-3	Aurora-Brule Rural Water System	1980	Missouri River	769 AF	621 AF
5113-3	Town of Pickstown	1987	Missouri River	supplied by Randall Rural Water District	124 AF
6259-3	City of Volga	2001	Big Sioux: Brookings Aquifer	218 AF	1,216 AF

Motion by Hoyt, seconded by Holzbauer, to allow the eight future use permits to remain in effect for the amounts shown. Motion carried.

CONSIDER MOTION FOR PROCEDURE ORDER IN THE MATTER OF WATER PERMIT APPLICATION NO. 7006-3, LONG VIEW FARM, LLP:

A transcript of this hearing was prepared by the court reporter. The transcript and exhibits are on file at the Department of Environment and Natural Resources, Water Rights Program, in Pierre.

CONTINUATION OF PUBLIC HEARING ON AMENDMENT TO ADMINISTRATIVE RULES ON UNDERGROUND STORAGE TANKS: Mr. Hallem stated that because it has been determined that publication of the public hearing was not adequate, the department has proposed withdrawal of the rules at this time. He requested that the board accept withdrawal of the proposed rules and acknowledge that publication was inadequate.

Mr. Hallem advised the board to pass a motion authorizing the department to advertise for a public hearing to be held on October 2, 2008.

Motion by Freeman, seconded by Hutmacher, to authorize the department to advertise for a public hearing to consider amendments to the Underground Storage Tank rules on October 2, 2008. Motion carried.

WATER PERMIT APPLICATION NO. 6989-3, MODAK DAIRY: Ms. Best stated that Greg and Delores Gibson filed a petition to intervene in this matter. Ms. Best reported that the department has received a settlement agreement that was agreed upon by the intervenors and MoDak Dairy.

Ms. Best offered DENR Exhibit 1, the settlement agreement; DENR Exhibit 2, James Goodman's Curriculum Vita; and DENR Exhibit 3, the agency file. The exhibits were accepted into the record.

Mr. Goodman presented his report on the application.

Application No. 6989-3 proposes to appropriate 0.22 cfs (100 gpm) from three wells approximately 30 feet deep located for commercial use in a dairy operation in Codington County.

The Pleistocene unknown is an aquifer of glacial origin but was not of sufficient size or cannot be included into a mapped aquifer unit. In this case the well site could be considered in the uppermost extent of the Big Sioux Brookings Aquifer that extends north from Hamlin County up Stray Horse Creek into Codington County and finally into Deuel County to the east. No estimates are available for water in storage or even maps of the aquifer in either Codington or Deuel Counties. The closest map available would be the extension of the Big Sioux aquifer into Codington County as shown in the Hedges report. Even so that report did not indicate the aquifer extended into Deuel County.

A test well completed by the applicant indicates topsoil from 0 to 4 feet, yellow sand and clay from 4 to 9 feet, sand and gravel from 9 to 29 feet and blue clay from 29 to 52 feet all below land surface. This test well had a static water level 4 feet below land surface and was capable of producing 65 gpm using air to develop. This test information looks favorable and indicates there is an aquifer at this site capable of producing the amount of water requested.

There are no other nearby water permits/rights that obtain water from this source. Interference is not a concern. There are domestic wells in the area that use this water source. This requested pumping is relatively small and drawdown created by pumping should not be significant. However, with so little knowledge of the aquifer size for this area the applicant will need to pay close attention to the water supply and possibly have a backup supply available. The concern would be that the aquifer may be

small and with the shallow nature of the water table the yields of wells could be adversely affected during an extended period of drought.

Mr. Goodman concluded that water is available from this water source whether it is the Big Sioux Brookings or Pleistocene Unknown aquifers. The aquifer appears to be under water table conditions at this site. There are no other permitted users in this area. There are domestic users from this source in this immediate area. Interference is not expected to be a concern. Drawdown created by pumping at this rate is not expected to be significant. The wells authorized by this application must be constructed in accordance with SD Well Construction Standards.

Plans and specifications for the facility have been approved by the Department.

The chief engineer recommended approval of Application No. 6989-3, MoDak Dairy with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the following qualifications:

1. Permit No. 6989-3 is subject to compliance with requirements of the Department's Water Pollution Control Permit issued pursuant to SDCL 34A-2-36 or 34A-2-112 for concentrated animal feeding operations.
2. Permit No. 6989-3 is subject to compliance with all existing and applicable Water Management Board Rules including but not limited to:
 - a) Chapter 74:54:01 Ground Water Quality Standards,
 - b) Chapter 74:54:02 Ground Water Discharge Permit,
 - c) Chapter 74:51:01 Surface Water Quality Standards,
 - d) Chapter 74:51:02 Uses Assigned to Lakes,
 - e) Chapter 74:51:03 Uses Assigned to Streams, and
 - f) Chapter 74:52:01 through 74:52:11 Surface Water Discharge Provisions

Motion by Freeman, seconded by Bjork, to approve Water Permit Application No. 6989-3, MoDak Dairy, subject to the qualifications set forth by the chief engineer. Motion carried.

OCTOBER MEETING: Motion by Hutmacher, seconded by Holzbauer, that the next Water Management Board meeting be October 2-3, 2008, at the Matthew Training Center, 523 East Capitol, Pierre, SD. Motion carried.

ADJOURN: Chairman Hoyt declared the meeting adjourned.

A court reporter was present for this meeting and a transcript of the proceedings may be obtained by contacting Capital Reporting, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

The meeting was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

Water Management Board
July 2, 2008 Meeting Minutes

Approved this 2nd day of October, 2008.



Loren E. Byt

Chairman, Water Management Board



Bernita Sanchez

Secretary, Water Management Board

WATER MANAGEMENT BOARD MEETING

July 2, 2008

Qualifications:
 wi - well interference
 wcr - well construction rules
 iq - irrigation questionnaire
 lf - low flow

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
2628-2	Copper Oaks 1 Water Assoc.	Rapid City	PE	0.08 cfs	shd	1 well-Deadwood Formation	wi, wcr, 1 special
2630-2	Ruth Ziolkowski	Crazy Horse	CU	0.167 cfs	commercial	1 well-Crystalline Rock	wi, 1 special
6794A-3	Hoffman Farms	Bowdle	ED	no add'l	130 acres	7 wells-Bowdle Edmunds	wi, wcr, iq
6815A-3	Hansen Properties	Centerville	CL	no add'l	no add'l acres	1 well-Lower Verm:Missouri	wi, wcr, iq
6905-3	Panner Seed Inc.	Huron	BD	0.022 cfs	commercial	1 well-unknown	wi
6961-3	Norman Kramer	Yankton	UN	1.56 cfs	160 acres	dugout	wi, iq, 1 special
6962-3	Norman Kramer	Yankton	UN	1.56 cfs	160 acres	1 well-Brule Creek Aquifer	wi, wcr, iq, 1 special
6963-3	Norman Kramer	Yankton	UN	1.44 cfs	80 acres	1 well-Brule Creek Aquifer	wi, iq, 1 special
6985-3	Nels J Sorenson	Vermillion	CL	1.78 cfs	136 acres	1 well-Lower Verm:Missouri	wi, iq
6986-3	La Verne Mennenga	Castlewood	HM	3.56 cfs	225 acres	3 wells-Big Sioux:Brookings	wi, wcr, iq, 1 special
6987-3	JFR-INV-LTD, LLC	N Sioux City	UN	0.78 cfs	no add'l acres	1 well-Missouri Elk Point	wi, wcr, iq
6990-3	James R Orr	Clark	CK	3.56 cfs	280 acres	2 wells-Altamont Aquifer	wi, wcr, iq
6991-3	Straw Hat Land & Cattle	Rapid City	JE	0.33 cfs	105 acres	1 well-Crow Creek Aquifer	wi, iq
6992-3	R & R Farms	Clark	CK	2.0 cfs	136 acres	1 well-Altamont Aquifer	wi, wcr, iq
6995-3	Steve LaFave	Mission Hill	YA	0.67 cfs	60 ac & domestic	3 wells-Lower James Missouri	wi, wcr, iq, 1 special
6996-3	Hoffman Farms	Bowdle	BD	1.78 cfs	130 acres	8 wells-Bowdle Edmunds	wi, wcr, iq
6998-3	United Feeders LLP	Morris MN	CK	0.89 cfs	commercial	2 wells-Altamont Aquifer	wi, wcr, 2 special
6999-3	Mark Jensen	Aurora	BG	1.0 cfs	97 acres	1 well-Big Sioux:Aurora	wi, wcr, iq
7000-3	James H Cole	Hudson	LN	1.78 cfs	140 acres	1 well-Big Sioux:South	wi, iq
7001-3	Hanson Properties	Centerville	CL	1.78 cfs	180 acres	1 well-Lower Verm:Missouri	wi, wcr, iq
7002-3	Hanson Properties	Centerville	CL	1.78 cfs	180 acres	1 well-Upper Verm:Missouri	wi, wcr, iq
7003-3	Hanson Properties	Centerville	CL	0.11 cfs	39 acres	1 well-Lower Verm:Missouri	wi, wcr, iq
7005-3	Randall Enterprise LLC	Dell Rapids	MY	1.11 cfs	118 acres	1 well-Big Sioux:Moody	wi, wcr, iq
7007-3	Gordon Little	Watertown	HM	1.78 cfs	140 acres	1 well-Big Sioux:North	wi, wcr, iq
7008-3	Roger D Hanson	Sioux Falls	YA	1.78 cfs	160 acres	1 well-Lower James:Missouri	wi, wcr, iq
7009-3	Roger D Hanson	Sioux Falls	YA	1.78 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7010-3	Gary Andersen	Centerville	CL	0.48 cfs	110.6 acres	1 well-Parker:Centerville	wi, iq

No.	Steve & Mike Allard	Elk Point	UN	1.89 cfs	130 acres	1 well-Missouri:Elk Point	wi, wcr, iq
No.	Name	Address	County	Amount	Use	Source	Qualifications
7011-3	Sioux River Dairy, Inc.	Watertown	CD	0.089 cfs	commercial	1 well-Big Sioux:North	wi, 2 special
7012-3	Richard Beitelspacher	Bowdle	ED	1.89 cfs	156 acres	4 wells-Bowdle:Edmunds	wi, wcr, iq
7013-3	Gary Smith	Mission Hill	YA	2.0 cfs	76 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
7014-3	Robert Walloch	Lesterville	YA	1.78 cfs	111 acres	1 well-L. James Miss:Scotland	wi, wcr, iq
7015-3	J & J Farming Co LLC	Yankton	YA	1.56 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7016-3	J & J Farming Co LLC	Yankton	YA	2.57 cfs	180 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7017-3	Brook Bye	Vermillion	CL	1.84 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7018-3	Rodney L Larson	Kimball	BL	3.89 cfs	270 acres	2 wells-Crow Creek Aquifer	wi, wcr, iq
7019-3	Rodney L Larson	Kimball	BL	1.84 cfs	135 acres	1 well-Crow Creek Aquifer	wi, wcr, iq
7020-3	Rodney L Larson	Kimball	BR	1.94 cfs	135 acres	1 well-Crow Creek Aquifer	wi, wcr, iq
7021-3	Rodney L Larson	Kimball	BR	1.94 cfs	135 acres	1 well-Crow Creek Aquifer	wi, wcr, iq
7022-3	Jon Reiners	Hurley	TU	1.78 cfs	127 acres	1 well-Parker Centerville	wi, wcr, iq, 1 special
7023-3	City of Sioux Falls	Sioux Falls	MA/ LN		municipal	connect Lewis & Clark RWS to city's distribution system	none

Future Use Reviews

No.	Name	Address	County	Amount Remaining in Reserve	Use	Source	Qualifications
551-2	City of Winner	Winner	TR	1,568 AF	municipal	Ogallala Formation	none
1622-2	City of Gregory	Gregory	GY	365 AF	municipal	Ogallala Formation	none
1660-2	City of Burke	Burke	BY	396 AF	municipal	Ogallala Formation	none
3429-3	WEB Development Assn	Aberdeen	BN	15,000 AF	rws	Missouri River	none
3984A-3	Big Sioux Community Water System	Egan	MY	889 AF	rws	Big Sioux:Moody Aquifer	none
4456-3	Aurora-Brule RWS	Kimball	AU	621 AF	rws	Missouri River	none
5113-3	Town of Pickstown	Pickstown	CM	124 AF	municipal	Missouri River	none
6259-3	City of Volga	Volga	BG	1,216 AF	municipal	Big Sioux:Brookings Aquifer	none

